Wednesday, February 16, 2000

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
In re

ROBERT and GINGER WEEKS, No. 97-13496

Debtor(s).

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Memorandum of Decision

Debtor Robert Weeks was a student at McGeorge School of Law at the University of the Pacific from 1995 to 1997. His tuition for the spring semester of 1997 was $5,009.00. Unable to pay the full amount, Weeks signed a "Deferred Payment Plan Contract" on January 13, 1997. Under its terms, he agreed to pay $3,514.00 immediately and pay the balance of $1495.00 by March 13, 1997. Weeks gave the university his check for $3,514.00 on January 13, 1997, but the check did not clear. Weeks withdrew from the school effective March 10, 1997, without having paid any of the $5,009.00 due under the Deferred Payment Plan Contract. Under school policy, a student who leaves between the fifth and tenth weeks is liable for 75% of the semester's tuition. Weeks and his wife filed a joint Chater 7 petition on September 18, 1997, and were granted a discharge on January 8, 1998. After his discharge, Weeks requested a copy of his transcript. The university refused, noting his unpaid tuition. Weeks then brought the current motion for contempt and damages for violation of the

automatic stay.[1] The university takes the position that its claim against Weeks is nondischargeable pursuant to § 523(a)(8) of the Bankruptcy Code as an educational loan. If this position is correct, the motion must be denied as nondischargeable debts are not subject to the discharge injunction. If this were a case of first impression, the court might well find this section inapplicable, as no funds changed hands. However, there are numerous reported cases on this issue. The majority rule, supported by two court of appeals decisions, is that debts such as the one here at issue are not subject to discharge. In In re Merchant, 958 F.2d 738, 741 (6th Cir.1992), the debtor had, while a student, signed promissory notes to her university to cover educational expenses. The court of appeals reversed lower court rulings that the obligations evidenced by the notes were discharged. The court held that § 523(a)(8) was to be broadly interpreted as encompassing credit extensions for educational purposes. Similarly, the court in U.S. v. Smith, 807 F.2d 122, 125 (8th Cir.1986) interpreted § 523(a)(8) liberally as including a debtor's obligation to repay a scholarship where the debtor failed to meet his post-graduation obligations. Likewise, the First Circuit Appellate Panel held in In re DePasquale, 225 B.R. 830, 833 (1st Cir. BAP 1998), the court considered a case where a university allowed the debtor to attend class without prepaying her tuition. Although it billed her for the tuition, the university agreed to allow the debtor to pay it later. In finding the debt nondischargeable, the court stated: We conclude that the proper focus under 11 U.S.C. § 523(a)(8) must be on the substance of the transaction. If a qualified institution or agency provides funds, credit, or financial accommodations to a debtor for education purposes under a contemporaneous, mutual understanding of future repayment, the arrangement may be a loan within the statute's meaning, whether or not funds, as such, were advanced. There is a minority position that debts such as those at issue are dischargeable. See, e.g., the 2-1 decision of the Second Circuit Appellate Panel in In re Renshaw, 229 B.R. 552 (2nd Cir. BAP 1999). The court declines to follow the minority, as to do so would create conflict with the two court of appeals decisions cited above. A lower federal court should only deviate under compelling circumstances from the interpretation placed on a federal statute by the only Circuits to have spoken. In re Berg, 188 B.R. 615, 620 (9th Cir. BAP 1995). For the foregoing reasons, Weeks' motion will be denied. Counsel for the university shall submit an appropriate form of order.

Dated: February 16, 2000

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Alan Jaroslovsky

United States Bankruptcy Judge

1. There can of course be no violation of the automatic stay, which terminated upon discharge. The court treats the motion as an inartful request for enforcement of the permanent discharge injunction of § 524(a)(2) of the Bankruptcy

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